IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14..03..2005

CORAM

THE HON'BLE MR.MARKANDEY KATJU, CHIEF JUSTICE
and
THE HON'BLE MRS.JUSTICE PRABHA SRIDEVAN

W.A.No.3540 of 2004
and
W.A.M.P.No.9 of 2005

Hotel Ambassador Pallava,
Rep. by its Executive Assistant Manager
Mr.Vasant Sampath,
30, Montieth Road,
Chennai - 600 008. ..Appellant.

Vs.

1. The Presiding Officer,
   II Additional Labour Court,
   City Civil Court Buildings,
   Chennai - 600 104.

2. M.Kanagasabesan,
   43, Bharathipuram,
   Shenoy Nagar,
   Chennai - 600 030. ..Respondents.

PRAYER: Appeal filed against the order of the learned single Judge dated 10.03.2004, passed in W.P.No.23532 of 2003, as stated therein.

For Appellant :: Mrs.Rita Chandrasekaran
For M/s.Aiyar and Dolia

For Respondent - 2 :: Mr.N.A.Padmanatha Rao

J U D G M E N T

THE HON'BLE THE CHIEF JUSTICE

This writ appeal has been filed against the impugned order of the learned single Judge dated 10.03.2004.

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2. We have heard the learned counsel for the parties and perused the record.

3. The facts of the case are that the 2nd respondent/employee was working in the appellant's establishment as Office Boy in Grade VI on monthly wages of Rs.600/-. In view of his good performance the management by order dated 24.11.1986 promoted him as Security Guard in the Security Department in Grade V. However, by his letter dated 29.11.1986 he refused to accept the promotion and expressed his desire to continue as Office Boy. However, without taking into consideration the said letter of the 2nd respondent the management issued a charge sheet cum show cause notice dated 12.12.1986 calling upon him to explain as to why disciplinary action should not be taken against him. Since, the 2nd respondent was not permitted to continue as Office Boy, he raised an industrial dispute which was referred to the Labour Court - 1st respondent. The reference order under Section 10 read with Section 2A of the Industrial Disputes Act stated:-

"Whether the non-employment of Thiru M.Kanagasabesan is justified, if not to what relief he is entitled; to compute the relief, if any awarded in terms of money if it can be so computed".

4. After considering the rival contentions of the parties and the material on record, the Labour Court by its Award dated 30.11.1994 set aside the order of the management dated 24.11.1986 and directed the management to reinstate the 2nd respondent as Office Boy with full backwages and continuity of service. Aggrieved, the management filed Writ Petition No.6591 of 1995.

5. In Writ Petition No.6591 of 1995 this Court by its order dated 25.07.2001 held that the 2nd respondent was not given an opportunity to adduce oral evidence and was not given reasonable opportunity of hearing. Hence, the Court remanded the matter to the Labour Court for denovo enquiry, giving an opportunity of hearing the parties concerned. Thereafter, both the parties were given an opportunity to adduce additional evidence and advance oral arguments. The Labour Court again by its Award dated 21.03.2003 set aside the order of the management and directed them to reinstate the 2nd respondent as Office Boy and to pay the entire backwages from the date of the promotion order viz., 24.11.1986. Aggrieved, the writ petition was filed in which the impugned order was passed.

6. The stand of the management before the learned single Judge was that there was no industrial dispute because it had never passed any order of dismissal, dismissing the 2nd respondent from service nor had it refused to permit him to serve under the management. Hence, it was alleged by the management that the question of non-

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employment does not arise at all, and hence there was no industrial dispute.

7. On the other hand, the stand of the 2nd respondent was that he had refused to accept the promotion and opted to continue as Office Boy. Hence, he is entitled to continue as Office Boy despite the order dated 24.11.1986, and the refusal of the management to permit him to continue as Office Boy was illegal, and it could not be deemed that the 2nd respondent had abandoned his service. It thus seems to us that the only allegation against the 2nd respondent was he refused to accept the promotion. It is well settled that no one can be forced to accept a promotion, and an employee can always forego a promotion if he so chooses. Since, the 2nd respondent had not accepted his promotion, we fail to understand how his refusal to accept the promotion given can be termed as abandoning of job. In our opinion, the action taken by the management was wholly arbitrary, unreasonable, illegal and amounted to victimization of the 2nd respondent. He was certainly dismissed from service because dismissal need not necessarily be by a written order, and it can be oral or even by the conduct of refusing to give work. In this case, there was dismissal of the 2nd respondent by refusing to allow him to continue working as Office Boy and by not paying him salary as such. Hence, there was certainly an industrial dispute which could be referred under Section 10 read with Section 2A of the Industrial Disputes Act.

8. We also do not agree that the 2nd respondent had abandoned his service. The finding of fact of the Labour Court is that he was always willing to serve as Office Boy, and he never refused to perform his duties as such. He only did not want to become a Security Guard. In our opinion, this cannot be called as mis-conduct by any stretch of imagination. The 2nd respondent was prevented by the management from discharging his duties as Office Boy since November 1986, merely on the ground that he refused to accept promotion. In our opinion, the action of the management was wholly arbitrary and illegal. There is nothing to show that the 2nd respondent was unwilling to work as Office Boy. He was only unwilling to work as Security Guard. By foregoing his promotion, we fail to understand what wrong he had committed.

9. It may be mentioned that in the Award of the Labour Court dated 21.03.2003 the clear finding of fact after considering all the evidence on record is that the 2nd respondent had not accepted his promotion as Security Guard, but he was always willing to work as Office Boy, the post already held by him, but the management did not permit him to work as Office Boy. Since, this finding of fact is based on evidence on record, we cannot interfere with it in writ jurisdiction. It is not open for this Court in writ jurisdiction to sit as a Court of Appeal over the findings of fact of the Labour Court and hold that the 2nd respondent had abandoned his job as Office Boy. The 2nd respondent had

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clearly stated before the Labour court that he was always ready and willing to work as Office Boy, but the management did not permit him to work as such, and he never accepted his promotion. This plea of the 2nd respondent was accepted by the Labour Court and we cannot sit as a Court of Appeal to reverse this finding of fact. Hence, we hold that there was no abandonment of job by the 2nd respondent, and instead it is a clear case of harassment and victimization by the appellant-management.

10. The appellant-management had given an option to the employee in the promotion order dated 24.11.1986 either to accept it or decline promotion, and the 2nd respondent declined promotion assigning his reasons immediately on 29.11.1986. Hence, the management cannot now accuse him of any mis-conduct, rather the mis-conduct is by the management which acted in a mala fide manner and victimized the 2nd respondent-employee.

11. The 2nd respondent was thrown out of employment for the past 18 years on account of the highly illegal and mala fide action of the appellant-management. He has alleged that he has been languishing in abject poverty, and that he was borrowing money from his friends and relatives to support his family. We cannot appreciate the attitude of the appellant-management which has acted in a highly mala fide and arbitrary manner, and hence while we dismiss this writ appeal, we direct that the Award of the Labour Court dated 21.03.2003 shall be implemented by the appellant-management forth with, and all arrears from the date of non-employment till the date of payment must be paid to the 2nd respondent with interest at the rate of 10% p.a. within two months from today. Consequently, connected miscellaneous petition is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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The Presiding Officer,
II Additional Labour Court,
City Civil Court Buildings,
Chennai - 600 104.

+1cc to M/s. Aiyar & Dolia Advocates Sr 12140
+1cc to Mr.N.A.Padmanatha Rao, Advocate Sr 11950

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